GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Sri M. B. Mangalorkar, Race Horse Trainer, No. 4, Convent Road, Civil Station, Bangalore-25.

Award of the Labour Court Bangalore—published.

Read the following papers—

(1) Letter No. 459/68-69, dated 16th July 1968 from Shri M. K. Srinivasa Iyengar, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 16*th day of July* 1968

Present

Sri M. K. Srinivasa Iyengar, B.Sc., LLB., Presiding Officer.

Reference No. 71 of 1967.

Sri K. Mohan, Watchman, No. 3, Cunningham Road, Bangalore-1 ... *I Party.*

Vs.

The Management of Sri M. B. Mangalorkar, Race Horse Trainer, No. 4, Convent Road, Civil Station, Bangalore-25 ... *II Party.*

Reference.

Government Order No. FCL 548 LLD 67, dated 28th September 1967.

AWARD

This is a reference made by the Government of Mysore under Section 10 (1) (c) of the Industrial Disputes Act, 1947 in its order No. FCL 548 LLD 67 dated 28th September 1967 and the points of dispute referred for adjudication are :—

"Is Sri K. Mohan, an employee of Sri M. B. Mangalorkar, Race Horse Trainer, No. 4, Convent Road, Civil Station, Bangalore-25 ?

If so, Sri M. B. Mangalorkar, Race Horse Trainer, Bangalore-25, justified in terminating the services of Sri K. Mohan ?

If not, what other reliefs, if any, Sri K. Mohan, is entitled to ?"

2. The case for the I Party Mohan is that he was a watchman in the Stables at No. 3, Cunningham Road, Bangalore under one Samlon for a number of years and Samlon left for Madras in October 1964 and subsequently died there in February 1965. According to him Samlon had not paid him the salary of Rs. 100 per month for 5 months from October 1964 to February 1965. Subsequently, the II Party Mangalorkar who is a race horse trainer came to the place and it is alleged assured him to continue him as an employee and pay all dues owed by Samlon and that he would pay Rs. 50 per month. It is alleged that Mangalorkar did not pay him the dues of Samlon or the salary of Rs. 50 for the period subsequent to February 1965 and his services have not been terminated and he has been looking after the stables as a watchman. It is further alleged that there is no valid termination of his employment and the II Party cannot take the stand that his services are terminated as there is no valid notice in that behalf. The I Party has claimed that the II Party is due to pay him by way of earned salary a sum of Rs. 500 for the period October 1964 to February 1965 and arrears of Rs. 1,650 from March 1965 to November 1967. A further claim is made that if the II Party were to terminate his services he is entitled to one month's salary in lieu of notice and what is termed "Service money by way of compensation" for three years service under the II Party at the rate of one month's salary for each year totalling to Rs. 200.

3. The case for the II Party is that Mohan had not been employed as a watchman by him and he had not agreed to pay any salary to him at Rs. 50 per month or any other amount and the claim made is a false one. According to him he had permitted Mohan to stay in a room in the premises at his own request on compassionate grounds, during his absence from Bangalore and he vacated it on his return during the previous year, but in the succeeding year without any cause Mohan took up a hostile attitude and refused to move out of the room and therefore he issued him a notice dated 31st July 1967 to vacate the room and the same not having been complied with followed it up with a suit in the civil court which is pending. He has contended that the

petition is not sustainable in law and is *mala fide* and this Court has no jurisdiction to entertain the same.

4. In the order of reference, one of the points referred for adjudication is whether the II party is justified in terminating the services of the I party. But the claim of the I party in his claim statement is to the effect that it has not been terminated and a claim is made for the eventuality of such a termination. The main point for determination is whether Mohan's claim that he had been taken as an employee by the II Party is true.

5. In order to establish that he was an employee Mohan has examined himself and four other witnesses. On the side of the II Party besides Mangalorkar four other witnesses have been examined.

6. Sri V. C. Ramachandran the first witness for the I Party is the owner of the stables. His evidence is that Mangalorkar took the stables on lease about 3 years prior to his giving evidence and prior to that Samlon was a lessee and Mohan has been residing with his family in the stables from the time Samlon had taken it on lease. He stated that he was not aware of the understanding between Mohan and Samlon or Mangalorkar but that when he used to visit the stables for purposes of effecting repairs, etc, Mohan used to tell him that he was a watchman and he was not aware of the terms of agreement. The assertion of Mohan to him would only be a self-serving statement and the evidence of Sri Ramachandran would not prove that Mohan was an employee of Mangalorkar or that he had been engaged on a salary.

7. Two witnesses Narasiah (W.W. 3) and Channaiah (W.W. 4) do not even profess to have been present when Mohan was taken as an employee by Mangalorkar or when any terms of employment were settled. They do not even specifically assert that Mangalorkar had employed Mohan. Channaiah stated that he knew about Mohan being a watchman at the stables in Cunningham Road and had seen him there as he used to pass near that road and did not know what salary he was being paid. He stated that he had never seen Mangalorkar. Though in the examination-in-chief Narasiah said that he knew Mohan for about 10 years and he was a watchman in the stables and Samlon was paying him Rs. 100 p.m. During cross-examination stated that he did not know when exactly Samlon occupied the stables and he had not gone to the stables after Samlon left them. He did not know about any agreement

between Mohan and Mangalorkar. He had only seen Mangalorkar but had not talked to him and was not acquainted with him. The evidence of these two witnesses is absolutely vague in regard to the point at issue. According to Narasaiah about 1½ years back the police of High Grounds came near the stables and told Mohan to vacate the room and take away his things and in his view they had no business to interfere with his possession and therefore he got Mohan to give petitions to the Labour Court, Home Minister and others. Obviously, because he was asked to leave the room, this witness is trying to support Mohan by some vague answers.

8. Veeran (W.W. 2) is a brother-in-law of Mohan and he appears to have been doing some odd jobs to Samlon. His evidence is that he was working as a supervisor under Samlon. He has produced some letters written to him by Samlon wherein he has been asked to attend to some particular work or call on some person. But his evidence is that he was not being paid any salary by Samlon. During the examination-in-chief he stated that Mohan was a permanent watchman in the stables and Samlon was paying Mohan a salary of Rs. 100 per month and when Mangalorkar came he told him that he did not need a supervisor but only a watchman and therefore he told him that Mohan was being paid Rs 100 by Samlon and he may pay him the same salary. But according to him Mangalorkar said he would pay Rs. 50 only and give him a room for occupation and Mohan continued to stay. During cross-examination he stated that as long as Samlon was alive he was staying in the stables and Mohan who was his younger sisters's husband was staying with him. The letters written by Samlon would indicate that the witness was associated with him. They make no reference to Mohan or give any directions to him. Veeran himself is not staying in the stables after Samlon left and even he was not being paid any salary by Samlon. The probability appears to be that merely because the witness was permitted to stay there his brother-in-law Mohan stayed with him along with his wife who was the sister of witness. The witness being closely related to Mohan is obviously interested in him. There is no independent evidence or proof of Mohan receiving any salary from Samlon or working as a watchman. As such an occasion to continue him as a watchman would not arise.

9. According to Veeran, Mohan was a permanent watchman at the staules. The building does not belong to race horse trainers, either Samlon or Mangalorkar. They were in occupation

only as lessees. A permanent watchman could be there only if engaged by the owner and only under his control. The evidence of Sri. V. C. Ramachandran dispels the idea of Mohan having been such a permanent watchman. According to Mohan during his cross-examination, at the time Mangalorkar said he would pay Rs. 50 as salary no one else was present. This improbabilises the version given by Veeran.

10. The evidence of Mohan is that some fifteen days after the death of Samlon in February 1965, Mangalorkar came to the stables with one jockey Osborne and asked him to open the gate and show the stables and so he did. They asked him who was the watchman to which he said he was and was being paid Rs. 100 per month and a room for his occupation. Mangalorkar however said he would pay him only Rs. 50 and not Rs. 100 and he agreed and stayed on. According to him a month later he asked for his salary and Mangalorkar said he would pay and went away to Madras and in the second month also he asked for the pay and Mangalorkar said he would pay but went away to Ooty. He implored him for two years to pay but he refused and asked him to vacate the room and take away his things. Thereafter he gave a petition to the Labour office Subsequently on 13th June 1967 Mangalorkar brought the police from High grounds and they asked him to vacate the room. Thereafter he gave petitions to the Labour Commissioner and Hon'ble Minister for Home and no one came near his house. He has admitted that a suit filed by Mangalorkar is pending against him. During the cross-examination he has stated that horses are brought and kept in the stables during racing season and after the racing season they are taken away to other places and no other work is done in the stables. It was put to him that from March 1966 to October 1966 he had left the room in the stables and gone away but he did not accept it as correct. However, he stated that he had been told that as it was racing season women and children should not be there and therefore he had sent away his wife and children and only he used to be there. During the course of his evidence he does not make any reference about any promise by many looker in respect of illeged arrears due by Samlon.

11. Of the witnesses examined for the II Party the first witness is B. P. Shivan, another race horse trainer. His evidence is that he used to go to the stables at No. 3 Cunningham Road and no watchman had been engaged. He had not see Mohan there at all either during the time Mangalorkar had taken

it or when Samlon had taken it. The third witness is a jockey V. Gopal who has stated that Mangalorkar used to entrust him with disbursement of salary to the staff and payment of feeding charges of the horses, during his absence from Bangalore and he used to make those payments and at no time Mohan demanded any salary. His evidence is also that Mohan had not been engaged as a watchman. He has also spoken to entries made by him in the pay register maintained by Mangalorkar which have been produced as Ex. M. 2 and M. 2 (a). A suggestion was made to him that because be would ride the horses trained by Mangalorker he is supporting him. He admitted that he would ride the horses trained by Mangalorkar but denied that he is giving any evidence in support of him on that account. These are independent persons whose testimony is entitled to be believed. Baboo, a Jamedar working under Maugalorkar is examined as M. W. 4. His evidence is that Mangalorkar was paying the salary of all workers regularly on the 5th and 20th of each month. He has stated that Mohan was not in the stables during March to October 1965 and 1966 when Mangalorkar occupied the stables. According to him one Veeran requested Manalorkar to permit him and his sister to stay during the absence of Mangalorkar. When he left in October 1965, Mangalorkar permitted him and also told him that he would give Rs. 50. Accordingly in April 1966 when Mangalorkar returned for the racing season Mangalorkar gave Rs. 50 to Veeran's sister and there after they left. He has stated that Mohan had not been engaged as a watchman.

12. The evidence of Mangalorkar is that he took the stables through the Commission Agent Yoosuf Yunus. The lease is from June to August and sometimes the horses will be kept in Bangalore till October. After he occupied the stables in 1965 and when he was about to leave Bangalore in October, he asked Mr. Yousuf Yunus about the stables being available for the next season and Yousuff having told him that he could occupy them at the same rent, he agreed for the same. His evidence is that one Veeran who was doing odd jobs to Mr. Samlon asked him to allow his sister and her family to stay on in the premises and after obtaining permission of Mr. Yousuf Yunus, he permitted them to stay. He had also told Veeran that he would give Rs. 50 out of sheer charity. In April 1966 he returned from Madras and occupied the stables and paid Veeran's sister Rs. 50 and the family vacated the stables. The family came back to stay after October 1966 and he permitted them to stay on. However, in April 1967 when he returned, they did not leave and asked for some time till they

could find a place. He went to Ooty and returned in May 1967 and asked them to leave. But they refused and threatened to go to the Labour Court. He there upon gave a complaint to the High Grounds police on 14th June 1967. He stated that he had never engaged Mohan as a watchman and there was no need for a watchman as he had his own staff to look after the race horses under his training. He stated that the owners leave the horses for training with him and pay the feeding charges *etc.*, during the period of training and if any of the horses won, he gets 10% commission from the stake money and otherwise nothing.

13. Yousuff Yunus is examined as M. W. 2. His evidence is of importance. He was acting as an agent of Mr. V. C. Ramachandran in regard to letting out of the stables since about 10 years. He let out the stables to Mangalorkar in 1965. He has given evidence with regard to the receipt passed by him which has been marked as Ex. M. 1. The stables are leased out for the racing season and Ex. M. 1. shows that it had been leased out from April to October 1965. This *prima facie* shows that the person who takes the stables on lease for the recing season has no right or interest in the stables after the period of the lease. The theory of the trainer engaging a watchman during the period when he has no right to occupy the stables appears to incongrucus. Further the evidence of Yousuf is that he used to be visiting the stables during April to October 1965 for arranging for the repairs etc. He had not seen Mohan at the stables. He also stated that prior to Mangalorkar Mr. Samlon was occupying the stables. During that period i.e., after the racing season he had seen one Veeran an employee in Vidhana Soudha occupying the stables. He had also seen Mohan on one or two occasions, when Samlon had taken the stables and Veeran had told him that he was his brother-in-law and his people were staying there as they had no other place to stay nearby and Mohan was a mason doing white washing work. He also stated that Mohan has also told him that he was doing white washing work. He stated that no watchman had been engaged either by Samlon and Mangalorkar and there was no need to ergage a watchman. He has further stated that no trainer allows any stranger to stay in the premises when the horses are there and they have a Jamadar for the stables and one Syce for each horse and these Syce will be near the horses and along with the Jamadar keep watch. According to him after the racing season some persons ask permission to stay in the room in the stables and such permission is given. He has further deposed in November 1965 Mangalorkar told him that Samlon's

man, Naming Veeran, may be permitted to stay as he had begged him for permission to stay there during the interval before the succeeding racing season and he had also told him that he had promised to give Veeran Rs. 50. During his cross examination, it was put to him that he had complained to Mohan that Mangalorkar has not paid his commission and that Mohan had also told him that he had not been paid his salary and he in turn told him to file a suit. He however, denied all these suggestions. The evidence of this witness in regard to the absence of any necessity to engage a watchman finds corroboration from the evidence of M. W. 1 B. P. Sivan. Yousuf Yunus was the person who actually leased out the stables on behalf of Mr. V. G. Ramachandran. He is quite an independent person and he being in-charge of the stables, the evidence given by him is entitled to great weight. The arrangement about Mohan being given permission to stay during the off season finds support from the evidence of Yousuf Yunus. His evidence that no trainer would allow a stranger to remain in the stables when the horses are kept there also finds corroboration from the answer given by Mohan himself during his cross-examination that his wife and children had been asked to go away during the racing season and in fact had left the place. His assertion that only he used to stay on is not entitled to be believed.

14. The pay register which has been produced and marked Ex. M. 2 is for the period August 67 and onwards. M. 2 (a) consists of some sheets and is for broken periods. But they contain acknowledgements for disbursing salaries of the staff. Though Ex. M. 2 (a) contains some infirmities the purpose for which Ex. M. 2 and M. 2 (a) are produced is to show that Mohan is not one of the persons shown as an employee. It is the absence of an entry that is sought to be relied upon Such absence by itself would not be conclusive of the matter. But taken along with the evidence that is on record that Mangalorkar used to pay up the salaries regularly and right from the beginning when accordingto Mohan, he was employed as a watchman, no payment at all has been made, the entries lend some support to the contention that there was no occasion or need to engage him as a watchman. When Mangalorkar has been paying his staff members regularly, there is no particular reason why he should make a default with regard to Mohan, if really he had been engaged as a watchman. One significant factor is that Mohan has tried to take up a hostile attitude only when about the time of the racing season of 1967 he had been asked to move out. Before then, there is no demand

made in writing alleging that he was to be paid any salary or it had been allowed to be in arrears. It is quite unlikely that if for over 2 years he had not been paid his salary, he would not have taken some action to make a demand in writing especially when it appears to be clear that he has several persons to advise him and egg him on to write out petitions. Having regard to all the circumstances of the case. I am of opinion that the claim put forth by the First Party Mohan that he had been engaged as a watchman by Mangalorkar and that he was his employee is quite unbelievable and an imaginery thing. I, therefore hold that Mohan was not an employee of Mangalorkar. Therefore the question of Mangalorkar terminating his services does not arise.

15. Having regard to the conclusions reached by him in regard to the points of dispute that the first party was not an employee of Mangalorkar and the question of terminating his services by the latter does not arise. I hold that the first party is not entitled to any relief. I make an award accordingly. I order each party to bear his own costs.

Sd/. M. K. SRINIVASA IYENGAR,
Presiding Officer,
Labour Court, Bangalore.

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M. K. SRINIVASA IYENGAR,
Presiding Officer,
Labour Court, Bangalore.